



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 25, 1991

Ms. Elaine H. Piper  
Assistant City Attorney  
Police Legal Advisor  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79999

OR91-525

Dear Ms. Piper:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13915.

The City of El Paso received a written request from an El Paso police officer for "letters or statements" regarding a written reprimand the officer received for the mistreatment of animals kept at his home. You state that you have released to the officer/requestor some of the records he requested, but contend that two documents, a letter from the city's Animal Control Division (the division) and an El Paso Police Department interoffice memorandum, come under the protection of section 3(a)(11) and the informer's privilege as incorporated in section 3(a)(1).

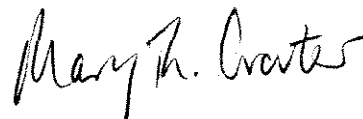
Section 3(a)(11) of the act excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 538 (1990). Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinion, and recommendation. Open Records Decision No. 450 (1986). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may also be withheld. Open Records Decision No. 313 (1982).

This office agrees that any factual information contained in the police department memorandum is inextricably intertwined with information protected by section 3(a)(11); the memorandum may therefore be withheld in its entirety. The letter from the division, however, does contain severable factual information. We have marked those portions of the letter that you may withhold pursuant to section 3(a)(11).

For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. See Open Records Decision Nos. 391 (1983); 191 (1978). The privilege also protects the contents of the informant's communications to the extent that they reveal the informant's identity. *Roviaro v. United States*, 353 U.S. 53, 60 (1957). This aspect of your request is governed by Open Records Decision No. 156 (1977). We have marked the information in the division's letter that comes under the protection of the informer's privilege. You must, however, release the remaining information in the letter not otherwise protected by section 3(a)(11) and section 3(a)(1).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-525.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/RWP/lcd

Ref.: ID# 13915

Enclosures: Marked documents

cc: Officer Ricardo Elias  
c/o El Paso Police Department  
911 N. Raynor  
El Paso, Texas 79902  
(w/o enclosures)